IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

**ORDER**

D.B. Civil Writ Petition No. 205/2000

M/s. Jaina Jewelery Company, partnership Firm, having its registered office at Gopal Nagar, Gopalpura Byepass, Jaipur through its partner Shri Rishab Jain son of Shri S.S. Jain, aged about 39 years, resident of C-39, Shanti Path, Shyam Nagar, Jaipur

.....Petitioner

Versus

1. The Union of India through its Secretary, Ministry of Commerce, North Block, New Delhi.
2. Central Board of Excise & Customs, North Block, New Delhi.
3. Commissioner of Customs, Calcutta.
4. The Joint Director, General Foreign Trade, New Delhi.
5. The Joint Director, General Foreign Trade, Udyog Bhawan, Tilak Marg, Jaipur

.....Respondents

Date of Order :: 19th September, 2007

PRESENT

**HON'BLE MR. JUSTICE R.M.LODHA**
**HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA**

Mr. Anil Mehta ) for the petitioner
with )
Mr. Sameer Jain )
Mr. Shashank Sharma for the respondents

**ORAL ORDER (PER R.M. LODHA,J.)**:

M/s. Jaina Jewelery Company is a partnership firm at Jaipur. The firm is said to be registered with Gems and Jewelery Export Promotion Council. The Joint Director General of Foreign Trade issued Import Export Code number to the firm. The firm applied under zero duty EPCG scheme of Export Import Policy 1997-2002 (for short, “Exim Policy”) alongwith the information of intended machinery to be imported. The firm claims to have given the details of all kinds of customs duty leviable in its application.

2. The Joint Director, General of Foreign Trade, New Delhi granted EPCG license for import of machineries on Zero Duty by the firm.

3. The firm imported plant and machinery as per the license issued under Zero Duty EPCG scheme. The said goods were received at Calcutta port. The firm claims to have submitted relevant custom papers for release of the goods through its customs house agent without payment of duty under EPCG scheme on execution of bond, except three items which were not covered under the exemption license. However, the Commissioner of Customs, Calcutta

assessed the goods in categorized customs duty and allowed exemption on basic customs duty only; 10% customs duty on all the goods as additional custom duty amounting to Rs. 10,94,969.02 was levied.

4. Since the Commissioner of Customs, Calcutta levied 10% of additional customs duty on the basis of Notification issued under Section 25 of the Customs Act, 1962 bearing number 29/97 which according to the firm was arbitrary and contrary to Exim Policy, the firm filed the writ petition praying for the following reliefs:

> "(i) That the demand of Rs. 10,94,969.02 be declared illegal and quash and set-aside.
>
> (ii) That the Notification No. 29/97 of the Act be declared arbitrary, illegal and without jurisdiction and further be quashed and set-aside.
>
> (iii)That petitioner be avoided from demurrage charges from respondent to be paid for container.
>
> (iv)That cost of the writ petition may kindly be awarded.
>
> (v) That any other writ, order or direction which your lordships may deem fit and proper on the facts and circumstances mentioned above may kindly be passed."

5. The writ petition is contested by the respondents. The respondents no. 4 and 5 have

filed reply-affidavit and traversed petitioner's case.

6. The counsel for the petitioner did not dispute that as per the license issued to the petitioner firm under the Foreign Trade (Development and Regulation) Act, 1992 for the import of capital goods of CIF value US $ 2,53,216/- (Rs.1,10,67,505.70/-) on Zero Duty as per the EPCG scheme, the firm was required to discharge export obligation six times CIF value of capital goods within a period of six years from the date of issue of capital license. The additional affidavit has been filed by the petitioner-firm on 10th September, 2007 pursuant to our order dated 7th September, 2007 admitting that the export obligation six times CIF value of capital goods has not been discharged by the petitioner-firm. However, reasons therefor have been given in the additional affidavit. The said reasons are: that the present writ petition was filed challenging the Notification No. 29/97 as the said notification was arbitrary and contradictory to Exim Policy; that by way of an interim order dated 3rd May, 2000, subject goods were allowed to be released on furnishing

bond but the same were not released; that the petitioner-firm had to file contempt petition and on 8.11.2000 this Court directed the respondents to release the goods on furnishing Bank guarantee equal to additional duty of customs and release the goods within two weeks therefrom; that even the order dated 8.11.2000 was not complied with and it was only on 15.12.2000 that the goods were released; that on release of plant and machinery they were installed and production process started but due to delay of around one year, lot of business loss incurred on account of demurrage, fulfillment of export market orders and interest loss on the bank; that the firm discharged export obligation to the extent of 62% by 31st March, 2002; that due to delay caused by the respondents, the petitioner firm was not able to fulfill the market orders and as a result they lost many export orders and even buyers stopped payment; that bank loan could not be paid in time due to delay and the banks took action under Securitization Act; that plant and machinery is under non production and it is beyond the control of the petitioner-firm to fulfill the export

obligation. In the additional affidavit it has also been stated that in terms of para 6.5 of the Exim Policy for the relevant period, the export obligation can be fulfilled by the export of same category of goods termed in the EPCG license and the petitioner-firm has already in the first year exported the goods mentioned in the license to the extent of 3.20 lacs US $, that comes to 22%. Thus total export obligation to the extent of 84% has been discharged.

7. The import export license was issued to the petitioner-firm on 23rd September, 1999 and as per the EPCG scheme and the import license dated 23rd September, 1999, the petitioner-firm was required to discharge export obligation by exporting the product namely moulded jewelery of gold/silver and platinum with stones/polished precious and semi precious stones of six times CIF value of the capital goods by 23rd September 2005. That the export obligations have not been discharged as per the license is apparent from the additional affidavit. In that event, in our considered view, the whole debate concerning the challenge to the Notification No. 29/97 (exemption no.

76-J) pales into insignificance. The petitioner is not entitled to any relief as claimed in the writ petition having failed to discharge the export obligation. As a matter of fact, it transpires from the additional affidavit that it is not possible for the petitioner-firm to discharge export obligation even now.

8. Writ petition is, accordingly, liable to be dismissed and is dismissed. Rule is discharged. No costs.

MAHESH CHANDRA SHARMA,J. R.M.LODHA,J.